



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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Ref: 8EPR-SA

Ernie Kuhlman, Chair  
Board of County Commissioners  
San Juan County  
PO Box 466  
Silverton, CO 81433

Dear Mr. Kuhlman:

The U.S Environmental Protection Agency (EPA) appreciates the opportunity to provide information to the Commissioners and address some of the statements and concerns presented in the "Open Letter" from Todd Hennis of the Gladstone Institute, Inc.

We recognize that the letter identifies many concerns that are commonly raised by communities when EPA is evaluating an area for cleanup actions under Superfund. In addition, there are several misleading and inaccurate statements in Mr. Hennis' letter. However, first it is important to emphasize why EPA is considering the option to use Superfund resources to respond to the degraded water quality conditions in the Animas River associated with impacts from historic mining. The magnitude of the problem in the Animas River from heavy metals being released from mining impacted land is causing water quality problems that is measurable from sampling below Silverton (at A72), where no fish are present in the River, to many miles beyond. Recent data from the Animas River Stakeholders Group (ARSG) indicates that the negative water quality impacts may be impacting fisheries at least 30 miles or more downstream in the Animas River.

The decision to list on the National Priorities List (NPL) can only be made by working through the process to see if it is NPL eligible. Both the State and EPA request community support prior to a site being listed. EPA wants the community to understand why we are now looking at this option very seriously. Water quality has degraded in the Animas River significantly in last 5 years. The present conditions in the Animas are directly attributable to mining-related impacts to Cement Creek; primarily since water treatment in Gladstone ceased. This is noted by comparing the last 1.5-5 years of data to earlier data sets that were showing improvements in water quality. The ARSG has summarized some of these data and EPA is presently evaluating these data as well. It is evident that the Cement Creek inflows are having a negative impact on the Animas.



EPA does not have a specific solution identified, but EPA and other members of ARSG would like your help and support in finding solutions to reducing these impacts to the Animas. If experience in other mining impacted areas is any guide, the resources required will be substantial and long term operation and maintenance of the solution or solutions may be required. EPA can not commit to final comprehensive solution without a remedial decision and there is no other program at EPA with the sorts of resources that EPA has to deal with the amounts of funding needed, for the time needed, to address the water quality issues for the long term.

There are four main points that EPA addresses below.

1. NPL Designation:

By now, much of the community has read or heard about Todd Hennis' open letter and also the very informative Silverton Standard article written by Mark Esper. EPA has not made a decision to place all or a portion of the mining district above Silverton on the National Priorities List (NPL). Mr. Hennis' accusations are incorrect with regard to EPA having broken a promise to the people of San Juan County. EPA committed to a community-based environmental protection effort in San Juan County, and indicated that Superfund would not be used as long as progress was being made. Although progress has been made with certain smaller mining-related sources of metals contamination, progress has not been made in the Animas River below Silverton. In fact, water quality has significantly degraded since water treatment at Gladstone ceased. As you know, Cement Creek has several inactive or abandoned mine properties that have a significant impact on the water quality in the Animas River. EPA is working with other federal agencies, the State, and local community members to identify all of the options to reverse the degradation of and improve the water quality of the Animas River. It is too soon to make conclusions about how to best correct this condition. However, the sources of the contamination in the Animas River is understood well enough to know that it requires substantial resources and an ability to commit to a long-term solution, which EPA is able to do with a designation on the NPL.

2. Superfund Stigma and Reality:

Leadville's economic woes did begin about the same time that Superfund entered the community of Leadville, Colorado. However, it was the closing of several mines in Leadville area at this same time that was the real cause of Leadville's economic woes. Contrary to Mr. Hennis' assertions, a Superfund designation does not preclude future mining. Any bona fide mining interest that wants to mine in the County would be subject to permitting and regulation by the State.

EPA has attached some excerpts from, and links to articles that refer to the stigma of Superfund. Many communities' experiences with Superfund suggest there is a positive impact from having Superfund involvement in their midst. The stigma associated with Superfund diminishes or resolves completely once a commitment is made to address contamination. The upper Cement Creek situation is slightly different in that the sources



of contamination are not adjacent to homes, but they are near parcels that are actively being developed. However, EPA still believes the properties carry more stigma and uncertainty with existing and ongoing contamination releasing and impacting the Animas River. EPA is the Agency with the authority, and resources to address these releases. Additionally, EPA recognizes that portions of the Cement Creek drainage are part of the County's Development Corridor. EPA has other resources to support revitalization and reuse of cleaned up lands that have been part of Superfund actions. Additionally, there could be an additional economical benefit with additional people and funds coming into the community with jobs that could be created by site remediation and restoration.

- Below is a summary from the report: **"What Does the Evidence Say About NPL Listing and Home Prices?"** that can be found at:

[http://www.epa.gov/superfund/programs/recycle\\_old/property.htm](http://www.epa.gov/superfund/programs/recycle_old/property.htm)

"There is also evidence that the existence of hazardous substances causes declines in commercial and industrial property, and that this, too, occurs regardless of whether or not sites are listed on the NPL.

In addition to this research by university economists, papers published by people working in the real estate industry show that the industry pays a lot of attention to contaminated sites and appears to have worked out effective approaches for finding out about and dealing with them. Thus, while some of the specific findings about the relationship between NPL sites and home prices may be controversial, the existing evidence clearly supports the idea that discovery of a property that is contaminated with hazardous substances has negative impacts on the prices of nearby homes. In addition, signals that the problem will be resolved tend to reverse these impacts. The key is beginning the cleanup of the site quickly and with as little fuss as possible. Bureaucratic issues, such as whether a site is listed on the NPL seem to be fairly unimportant to housing markets - although as part of a process that leads to site cleanup, listing a site on the NPL may have a positive effect on property values."

- In a different study (2009) that is primarily focused toward hazardous waste in or near residential areas the study discusses the concept of "without Superfund vs. with Superfund" scenarios on values, stigma, and risk reduction. (pages 14-17)

Please see:

<http://www.epa.gov/superfund/programs/recycle/pdf/PropertyStudy.pdf> - The page 17 Summary reads:

"There are major differences between the with-Superfund and without-Superfund scenarios. In both scenarios, however, it is the release of hazardous material that causes health risks and the subsequent reduction in area property values. In the with-Superfund scenario, the discovery of a release is more likely to be responded to quickly. More information is also generated about the risks of hazardous



material contamination, reducing uncertainties. Both short-term and long-term risks are more likely to be reduced, and reduced more quickly, in the with-Superfund scenario."

Other information that may be helpful in providing a different perspective about the benefits to a community from Superfund related cleanup actions may be found at:

- <http://www.epa.gov/superfund/programs/recycle/info/aftersf.html> (Video presentation of "Life After Superfund." The video explores how EPA, the Fort Valley (GA) community worked in partnership to clean the site, devise a redevelopment plan for the site, and enable the site to be transformed into office space, a welcome center, and a 15,000 square foot public library.
- <http://www.springerlink.com/content/w00j7561545386n9/> (Benefits of Superfund to 2 sites in Woburn, Massachusetts).

### 3. Potentially Responsible Parties (PRPs) and Paying for Cleanup Costs:

The concern as to who will pay for the costs of cleanup and related work is a reasonable question. However, the statement by Mr. Hennis that "...EPA's proposed project will be paid for by all past and present land owners in the Superfund area..." is not accurate and experience on other sites shows otherwise. EPA seeks to identify PRPs, and EPA focuses on pursuing those who created the problems and have the financial resources to contribute to paying for cleanup costs. Although current land owners are considered PRPs under CERCLA, EPA evaluates the circumstances of each landowner. Very often it is determined that if individual land owners did not contribute to creating the conditions causing the contamination and they have not made conditions worse by their actions, then EPA has not pursued those land owners for payment of the Agency's costs. If an individual or company is found to be liable for a portion of the problem, then there is a determination of their ability to pay a portion of the cost. Also, land owner cooperation with providing access is expected in order to implement remedies, and EPA works with land owners on the terms of access agreements. Additional information on the definition of liable parties and agency policies for working with land owners are available on the website below. (<http://www.epa.gov/compliance/cleanup/superfund/liability.html>)

### 4. Benefits From Cleanup Actions To The Silverton Community And The Broader Community Of Animas River Users:

In the process of considering the merits of having EPA use Superfund resources on improving the water quality in the Animas River, it is reasonable to expect that benefits will be realized by the community members and businesses. For example, long-term, as seen in the Leadville area, the Arkansas River now supports a healthy population of trout that were not present in the river 10 years ago. This brings more people to the area to take advantage of the fishing and other opportunities in the community. During the course of working on the project, local businesses would benefit from the gold medal fishing.



benefit from the presence of people working on the project and the financial resources necessary to implement remedies.

In closing, it is premature to say that EPA has determined there will be a National Priority List site in San Juan County. For the last 15 years, some localized improvements have been observed; however, the overall condition is substantially degrading due to the issues in upper Cement Creek. Through an NPL listing EPA will have the authority and resources that may be needed to address these types of problems.

At this time, and for the foreseeable future, EPA does not have any other mechanisms to commit the resources now and for the long-term responsibility without the use of Superfund. It is a tool that the ARSG has already been using on short-term, smaller scale removals/remediation projects with BLM/USFS in the watershed. However, EPA is limited in its ability to use removals for long-term projects that may require ongoing operations and maintenance.

EPA looks forward to ongoing discussions with the Commissioners and community regarding possible options to address the water quality issues in the watershed, ongoing participation in the Animas River stakeholder process, and helping the community identify the best approaches to manage the water quality issues. Please feel free to contact me with additional questions, concerns, and thoughts on the information that we have shared.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sabrina C. Forrest', with a large, stylized flourish at the end.

Sabrina C. Forrest, Site Assessment  
Manager and NPL Coordinator  
Preparedness, Assessment, and Response  
Program